

**Letter of Findings: 01-20140080P
Individual Income Tax
For the Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-6-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers filed their Indiana 2012 income tax return in October 2013, approximately six months after the original April 2013 due date. Taxpayers assert that they had obtained a federal extension regarding their 2012 federal income tax. Taxpayers did not pay at least ninety percent of their 2012 Indiana income tax by the original due date. Therefore, the Indiana Department of Revenue ("Department") issued a proposed assessment for penalty. Taxpayers protest the imposition of the ten percent negligence penalty, arguing that they enjoy an extension to their Indiana filing deadline based upon their application for an extension pertaining to their federal income tax return. A hearing was held on Taxpayers' protest and this Letter of Findings results. Additional facts will be provided as necessary.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayers protest the imposition of penalty. Taxpayers state that they received an extension for their federal 2012 income tax return and that they filed and paid their Indiana 2012 income taxes in a timely manner based upon that federal extension.

An analysis of relevant statutes begins with IC § 6-8.1-6-1, which states:

- (a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing extension. The person must include with the petition a payment of at least ninety percent (90[percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.
- (b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.
- (c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90[percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.
- (d) Any tax that remains unpaid during an extension period accrues interest at a rate established under IC § 6-8.1-10-1 from the original due date, but that tax will not accrue any late payment penalties until the extension period has ended.

The Department also refers to IC § 6-8.1-10-2.1(a), which provides in relevant part that:

If a person:

...

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

...

the person is subject to a penalty.

The Department further refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Expanding that relevant code section, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayers did not pay at least ninety percent of the final amount of income tax due by the original due date. The Department determined that this lack of payment constituted negligence under [45 IAC 15-11-2\(b\)](#), and so imposed penalty under IC § 6-8.1-10-2.1(a). During the administrative hearing, Taxpayers did not provide sufficient documentation or explanation to establish that they experienced unusual circumstances which prevented them from paying the amount of tax due to satisfy the applicable statutes and regulations. Taxpayers have not established that the failure to pay Indiana income tax for the 2012 tax year was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayers' protest is denied.

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